

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 05-101 ERIE
)	
NORFOLK SOUTHERN CORPORATION)	
and NORFOLK SOUTHERN RAILWAY)	
COMPANY, INC.,)	
Defendants)	ELECTRONICALLY FILED

AFFIDAVIT OF AILEEN S. BAXTER

COMMONWEALTH OF PENNSYLVANIA)	
)	ss:
COUNTY OF ERIE)	

Aileen S. Baxter, being duly sworn according to law, deposes and says:

1. I reside at 433 Lake Cliff Drive, Erie, Pennsylvania 16511 with my husband, G. William Baxter III. We both were eyewitnesses to the April 27, 1997 accident involving Robin Nixon and an eastbound train near the intersection of West 19th Street and Sassafras Street in the City of Erie, Pennsylvania.

2. On Sunday, April 27, 1997, at approximately 12:20 p.m., I was operating our vehicle in a southerly direction on Sassafras Street with my husband as a passenger in the right

front seat. We had just left church and were on our way to Pet Smart on upper Peach Street to pick up some dog supplies.

3. As we approached West 19th Street, I could see the cars of a train traveling in an eastbound direction along the single set of tracks through the middle of West 19th Street. The front of the train had cleared the intersection with Sassafras Street before we arrived. The crossing gates were down, and the crossing lights were flashing. Our vehicle was the first in line behind the gates on the north side of the crossing, waiting for the train to pass.

4. The train was very lengthy, and we were waiting a long time for the train to pass. While we waited, my husband and I discussed how slowly the train was moving.

5. As we continued to wait at the crossing, I observed a young man on a bicycle riding in an easterly direction on the north side of the tracks in the westbound lane of West 19th Street close to the moving train. My husband and I questioned whether he was holding onto the train, but when he reached the east side of the intersection with Sassafras Street, we could see that he was not.

6. Soon thereafter, I saw a second young man who also was riding a bicycle in an easterly direction on the north side of the tracks in the westbound lane of West 19th Street near the moving train. This young man, who I later learned was Robin Nixon, was holding onto something on the side of one of the cars, toward the rear of the car, in order that the train would pull him along. My husband and I both commented that was a dangerous thing to do. The first young man stopped his bike and turned around, and it appeared to me that he was yelling at the second young man to let go of the train before the accident occurred.

7. When the second young man, Robin Nixon, was in the vicinity of the intersection of Sassafras Street and West 19th Street and still holding onto the train, his bicycle began to

wobble, and he fell under the train. After he fell, it appeared that the young man was trying to reach under the moving train to retrieve his bicycle. My husband got out of the car and ran to assist the young man. I turned the car around and drove to Emergicare, which was only a block away, to get help. Before I went inside Emergicare, an ambulance crew already was leaving to go to the scene of the accident. I then returned to the accident scene.

8. The second young man, Robin Nixon, had been holding onto one of the cars toward the rear of the long train. The train continued to travel in an eastbound direction, after he fell off his bicycle and was injured, and passed completely through the Sassafras Street intersection before it stopped.

9. Given that the front end of the train had passed through the Sassafras Street intersection before we arrived at West 19th Street, that the train was very lengthy, and that the young man, Robin Nixon, was holding onto a car toward the rear of the train while riding his bicycle, it was clear that the persons operating the train did not see him holding onto the train and were not aware that the accident had occurred. From what I observed as an eyewitness, the accident was Robin Nixon's fault.

s/ Aileen S. Baxter

Aileen S. Baxter

Sworn to and subscribed before me

this 24th day of June, 2007.

s/ Gertrude R. Benson

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2007, the foregoing Affidavit of Aileen S. Baxter was filed electronically with the Clerk of Court using the Electronic Case Filing system. Notice of this filing will be sent to all parties by operation of the Court's ECF system and constitutes service of this filing under Rule 5(b)(2)(D) of the Federal Rules of Civil Procedure. Parties may access this filing through the Court's ECF system.

s/ Roger H. Taft
Roger H. Taft, Esq.